IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 63

Registrar's Appeal from the State Courts No 30 of 2022

Between

Eng Beng

… *Appellant*

And

Lo Kok Jong

… *Respondent*

JUDGMENT

[Damages — Rules in awarding]

TABLE OF CONTENTS

Eng Beng
v
Lo Kok Jong

[2023] SGHC 63

General Division of the High Court — Registrar's Appeal from the State Courts No 30 of 2022
Tan Siong Thye J
13 February 2023

20 March 2023 Judgment reserved.

Tan Siong Thye J:

Introduction

1 The Appellant, Eng Beng, is an 84-year-old female Singapore citizen. The Respondent is Lo Kok Jong. The Respondent's motor car had collided into the Appellant and she sustained serious injuries. The Appellant claimed for general and special damages, which included claims for her medical expenses incurred at a public hospital. Subsequently, the Appellant was transferred to a community hospital and she incurred further charges. The Appellant, being a Singapore citizen and a member of the Pioneer Generation ("PG"), benefitted from a range of government subsidies and grants which led to her out-of-pocket medical expenses being substantially reduced. However, the Appellant sought to claim the full medical expenses without deducting the various government subsidies and grants for which she benefitted. The Respondent's motor car was

covered by insurance and he had subrogated his rights to the insurance company.

2 This case first went before the Deputy Registrar ("the DR") who refused to allow the Appellant's claim for the full medical expenses from the Respondent on the ground that it would amount to double recovery. On appeal, the District Judge ("the DJ") also refused her claim for the full medical expenses on the same ground.

3 The Appellant, thereafter, appeals against the decision of the DJ. The central issue in this Registrar's Appeal, HC/RAS 30/2022 ("RAS 30"), is whether the Appellant is entitled to claim from the Respondent her full medical expenses, which included government subsidies and grants.

Background to the dispute

The parties

4 The Appellant and the Respondent were involved in a road traffic accident on 9 January 2020. The Appellant, then aged 81 years, was crossing the road when she was knocked down by a motor car driven by the Respondent. The Appellant was hospitalised as she suffered serious injuries, including a closed trimalleolar fracture of her right ankle.

The Appellant's negligence suit against the Respondent

5 The Appellant filed a negligence suit against the Respondent in June 2020, where she sought general and special damages. Interlocutory judgment was entered against the Respondent by consent in May 2021 for 85% of the damages to be assessed. After the hearing on the assessment of damages, on 1 July 2022, the DR awarded damages totalling $36,348.64, comprising

general damages of $18,600 for pain and suffering as well as special damages for medical expenses, transport expenses and medical apparatus. The DR, however, refused to award the Appellant an additional sum of $39,515.08 which she had claimed as special damages for medical expenses. This sum comprised various government subsidies and grants which featured in the Appellant's medical bills (collectively referred to as the "Subsidies and Grants"). The breakdown of the Subsidies and Grants amounting to $39,515.08 is as follows:

(a) generic government subsidies of $19,211.57;

(b) PG subsidies of $148.88; and

(c) government grants for Community Hospital Services and medical drugs (referred to as "community grants") of $20,155.16.

6 The Subsidies and Grants were deducted from the Appellant's medical bills. Accordingly, the Appellant's out-of-pocket expenses incurred were reduced. I shall consider the nature and purpose of the Subsidies and Grants in detail below at [52]–[60].

7 The Appellant lodged an appeal against the DR's decision in DC/RA 55/2022. The DJ hearing the appeal dismissed the appeal on 23 August 2022 and ordered the Appellant to pay costs of $2,200 (all-in) to the Respondent. The Appellant then sought leave to appeal against the DJ's decision before a Judge of the High Court in Chambers. Leave was granted, leading to RAS 30 now before me.

8 I shall set out the undisputed principles on damages in cases of negligence before considering the parties' respective cases.

General principles on damages

Damages are compensatory in nature and the rule against double recovery

9 The parties do not dispute that the general principle is that damages are compensatory in nature. In other words, damages seek to put the injured plaintiff in the same position, as far as possible, as if the tort had not been committed. This was clearly set out by the court in *ACES System Development Pte Ltd v Yenty Lily (trading as Access International Services)* [2013] 4 SLR 1317 (at [14]):

> The compensation principle is a general principle which prescribes that when a tortious wrong is committed by the defendant, the plaintiff ought – as a matter of logic, commonsense as well as justice and fairness – to be put in the same position (as far as it is possible) as if the tort had not been committed. In the oft-cited words of Lord Blackburn in the House of Lords decision of *Livingstone v The Rawyards Coal Company* (1880) 5 App Cas 25 (at 39):
>
> > [W]here any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

10 What this means, therefore, is that the injured plaintiff generally cannot recover more in damages than his actual loss. This was set out by the Court of Appeal in *The "MARA"* [2000] 3 SLR(R) 31 ("*The "MARA"*") (at [26]):

> … The basic rule is that damages in negligence are purely compensatory, and in assessing damages for the loss the injured plaintiff has sustained, any gain which is received by him, which he would not have but for the injury, *prima facie* will be taken into account. In *Hussain v New Taplow Paper Mills Ltd* [1988] AC 514 at 527, Lord Bridge of Harwich said:
>
> > [P]rima facie the only recoverable loss is the net loss. Financial gains accruing to the plaintiff which he would

> not have received but for the event which constitutes the plaintiff's cause of action are prima facie to be taken into account in mitigation of losses which that event occasions to him.

11 It would also generally mean that any collateral benefits conferred upon the injured plaintiff by parties unrelated to the tortfeasor which compensate for the loss sustained by the injured plaintiff should be taken into account when considering the amount recoverable from the tortfeasor. This has generally been referred to as the rule against double recovery, and was set out in *Lo Lee Len v Grand Interior Renovation Works Pte Ltd and others* [2004] 2 SLR(R) 1 ("*Lo Lee Len*") (at [12]):

> The object of an award of damages is to place the injured party as nearly as possible in the same financial position as he would have been in but for the accident. The basic rule is that the respondent cannot recover more by way of damages than the amount of his actual loss. If a collateral benefit compensates for the same loss, it must be taken into account in determining the actual level of compensation required through an award of damages. The consideration here is about the deduction of compensating advantages or benefits which a plaintiff enjoyed as a result of the breach. …

Exceptions to the rule against double recovery

12 The rule against double recovery is not, however, necessarily paramount in all situations. In some situations, even if the injured plaintiff's losses have been recouped by collateral benefits conferred upon him, the injured plaintiff may be allowed to retain the collateral benefits and make a claim for the full extent of his loss from the tortfeasor without deducting the collateral benefits conferred upon the injured plaintiff.

13 As was recognised by Belinda Ang Saw Ean J (as she then was) in *Lo Lee Len*, there is no universal principle governing the exceptions to the rule against double recovery. Rather, the common law has treated this matter as one

depending on "justice, reasonableness and public policy": *Lo Lee Len* at [33], cited by the Court of Appeal in *Minichit Bunhom v Jazali bin Kastari and another* [2018] 1 SLR 1037 ("*Minichit*") at [83].

14 There are two well-established exceptions to the rule against double recovery:

(a) First, where the injured plaintiff recovers any moneys under an insurance policy for which he has paid the premiums, the insurance moneys are not deductible from damages payable by the tortfeasor: *The "MARA"* at [28]. This will hereinafter be referred to as the Insurance Exception.

(b) Second, where the injured plaintiff receives moneys from the benevolence of third parties prompted by sympathy for his misfortune, such as in the case of a beneficiary from a disaster fund, the moneys received by the injured plaintiff are not deductible from damages payable by the tortfeasor: *The "MARA"* at [28]. This will hereinafter be referred to as the Benevolence Exception.

15 Under the Insurance Exception, insurance moneys are not deductible from damages payable by the tortfeasor because the injured plaintiff has paid for the accident insurance with his own moneys under an insurance policy, and the "fruits of this thrift and foresight should in fairness enure to his and not to the [tortfeasor's] advantage": *Minichit* at [83], citing Harvey McGregor, *McGregor on Damages* (Sweet & Maxwell, 19th Ed, 2014) ("*McGregor on Damages*") at paras 38–148.

16 In the case of the Benevolence Exception, as was stated by Dixon CJ in *National Insurance Co of New Zealand Ltd v Espagne* (1961) 105 CLR 569

("*Espagne*") (at 573) and cited in *The "MARA"* (at [32]), the collateral benefits that the injured plaintiff receives as a result of benevolence are intended for the injured plaintiff's enjoyment and not provided to relieve the liability of the tortfeasor to fully compensate him. Similarly, as was recognised by Windeyer J in *Espagne* (at 599–600) and cited in *The "MARA"* (at [32]), the focus is on the intent of the person conferring the benefits on the injured plaintiff.

17 Ultimately, the common thread which explains both the Insurance Exception and the Benevolence Exception is the rhetorical question framed by Lord Bridge in *Hussain v New Taplow Paper Mills Ltd* [1988] AC 514 ("*Hussain*") (at 527–528), which was cited by the Court of Appeal in *The "MARA"* (at [28]):

> … 'Why should the tortfeasor derive any benefit, in the one case, from the premiums which the plaintiff has paid to insure himself against some contingency, however caused, in the other case, from the money provided by the third party with the sole intention of benefiting the injured plaintiff?'

18 Further, the two well-established exceptions are not the *only* exceptions to the rule against double recovery, and the list of exceptions is not closed. Rather, the determination of what is deductible in the assessment of recoverable loss would ultimately turn on the specific facts of each case and will be based on considerations of justice, reasonableness and public policy. This was made clear in *The "MARA"* (at [29]):

> We have an observation on these two exceptions. The number of such exceptions is by no means closed, and there are circumstances where payments made to the injured plaintiffs do not fall precisely and squarely within either of the exceptions but are nonetheless not deductible in the assessment of recoverable loss. It should be borne in mind that the distinction between what is deductible and what is not is at times certainly not clear cut, and in between them are borderline cases which essentially turn on the special facts. In [*Hussain v New Taplow Paper Mills Ltd* [1988] AC 514], Lord Bridge said at 528:

> There are, however, a variety of borderline situations where a plaintiff may receive money which, but for the wrong done to him by the defendant, he would not have received and where there may be no obvious answer to the question whether the rule against double recovery or some principle derived by analogy from one of the two classic exceptions to that rule should prevail … Many eminent common law judges, I think it is fair to say, have been baffled by the problem of how to articulate a single guiding rule to distinguish receipts by a plaintiff which are to be taken into account in mitigation of damage from those which are not. Lord Reid aptly summed the matter up in *Parry v Cleaver* when he said [1970] AC 1, 13H: 'The common law has treated this matter as one depending on justice, reasonableness and public policy.'

19 Having set out the applicable legal principles, I shall now consider the circumstances of the present case.

Issues to be determined

20 The fundamental issue in RAS 30 is whether the Subsidies and Grants conferred upon the Appellant should be deducted from the amount claimed by the Appellant from the Respondent. In determining this issue, there are two questions to be answered:

(a) Whether the Subsidies and Grants fall within the two well-established exceptions to the rule against double recovery set out in *The "MARA"* at [28].

(b) If the answer to the above is in the negative, whether a new exception to the rule against double recovery encompassing the Subsidies and Grants should be recognised, and if so, the legal basis for such an exception.

21 To assist the Court in addressing the two issues, a Young Independent Counsel, Mr Jonathan Kenric Trachsel ("Mr Trachsel"), was appointed. I shall now set out the positions of the parties, the DR, the DJ and Mr Trachsel.

The positions of the parties, the DR, the DJ and Mr Trachsel

Summary of the positions of the parties, the DR, the DJ and Mr Trachsel

22 A summary of the positions of the parties, the DR, the DJ and Mr Trachsel can be found in the table below:

Do the Subsidies and Grants fall within the Insurance Exception?				
Appellant	**Respondent**	**The DR**	**The DJ**	**Mr Trachsel**
No	No	No	No	No
Do the Subsidies and Grants fall within the Benevolence Exception?				
Appellant	**Respondent**	**The DR**	**The DJ**	**Mr Trachsel**
The Subsidies and Grants could fall within the Benevolence Exception.	No	No	No	No

Should a new exception to the rule against double recovery which encompasses the Subsidies and Grants be recognised?				
Appellant	**Respondent**	**The DR**	**The DJ**	**Mr Trachsel**
Yes.	No. It is neither necessary nor desirable to do so. The existing categories of exceptions and existing principles on the doctrine of collateral benefits provide an adequate framework of inquiry.	No. There is little to suggest that Parliament intended to depart from ordinary common law principles.	No. There is no clear expression of intent by Parliament on whether victims may or may not claim from tortfeasors the Subsidies and Grants. The Subsidies and Grants therefore do not have the "additional characteristic" to qualify as an exception. It is also not just, reasonable and in accordance with public policy to allow victims to effectively "encash" the Subsidies and Grants.	A new exception should be recognised. However, this would extend only to select government subsidies and grants which are intended by Parliament to be exempt from the general rule against double recovery. The Subsidies and Grants in the present case do not fall within the scope of the new exception.

Can there be a new exception to the rule against double recovery?				
Appellant	**Respondent**	**The DR**	**The DJ**	**Mr Trachsel**
The number of exceptions to the rule against double recovery is not closed under common law. The outcome will not be unjust and/or against public policy.	NA	NA	NA	The number of exceptions to the rule against double recovery is not closed under common law.

The Appellant's case

23 The Appellant argues that she should be allowed to claim the amount forming the Subsidies and Grants from the Respondent and that the Court can order the return of the Subsidies and Grants to the relevant government agencies if necessary.[1]

24 The Appellant takes the position that the Subsidies and Grants do not fall within the Insurance Exception.[2]

25 Instead, the Appellant's position is that the Subsidies and Grants could fall within the Benevolence Exception and, if not, the Subsidies and Grant should be a new exception to the rule against double recovery.[3] The Appellant

1 The Appellant's Written Submissions dated 28 December 2022 ("the Appellant's 28 December 2022 Submissions") at para 12.

2 The Appellant's 28 December 2022 Submissions at paras 16–30.

3 The Appellant's 28 December 2022 Submissions at para 13.

relies on Belinda Ang Saw Ean JAD's decision in *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd and others* [2021] SGHC 10 ("*Azlin (HC)*") to support her position that the claim of the Subsidies and Grants should be an exception to the rule against double recovery.[4] I shall analyse *Azlin (HC)* in greater detail below at [86]–[95]. The issue of subsidies in *Azlin (HC)* is similar to this case. Thus, for context, it is necessary to know the brief facts of *Azlin (HC)*, which was a medical negligence case. The negligence of the first defendant, Changi General Hospital Pte Ltd, caused a delay in diagnosing the first plaintiff's lung cancer. The first plaintiff claimed from the first defendant damages which included her medical expenses. However, her medical expenses were mostly paid for by her insurance policies as well as from financial assistance which she received as a result of various government subsidies. The court in *Azlin (HC)* found that the first plaintiff's medical expenses were reduced because of the government subsidies. This did not prevent her from claiming compensation from the first defendant for the full medical expenses inclusive of the government subsidies. The Appellant in the present case submits that the DJ erred in her interpretation of Ang JAD's decision in *Azlin (HC)*.[5]

26 The key thrust of the Appellant's argument in the present case is that there is nothing to suggest that the government intended the Subsidies and Grants to offset or relieve the Respondent's liability to compensate the Appellant.[6]

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4 The Appellant's 28 December 2022 Submissions at para 13.

5 The Appellant's 28 December 2022 Submissions at paras 16–64.

6 The Appellant's 28 December 2022 Submissions at para 64.

27 The Appellant acknowledges that Parliament has not expressly stated that it intended for the Subsidies and Grants to be an exception to the rule against double recovery.[7] However, the Appellant argues that the lack of a clear expression of intent should not necessarily lead to the outcome that the amount forming the Subsidies and Grants cannot be claimed from the Respondent.[8]

28 The Appellant further argues that the Subsidies and Grants involve the disbursement of taxpayers' moneys. Therefore, allowing the Respondent to be relieved of his liability by allowing him to benefit from the Subsidies and Grants and thereby compensating the Appellant less would be an unjust result and against public policy.[9] This is especially so when the Respondent's liability arises from his own tortious wrong.

29 Finally, the Appellant states that she is willing to return the Subsidies and Grants to the relevant authority should she succeed in claiming the amount as damages from the Respondent. To this end, the Appellant states that an order should be made by this Court for her to return the Subsidies and Grants to the relevant authority.[10] While there may be logistical issues on how the amount should be returned to the relevant authority, the Appellant contends that this should not stand in the way of this Court making such an order. I highlight that the Appellant had not taken this position before the DR.[11] This position was, however, adopted by the Appellant before the DJ and is similarly being adopted at this appeal.

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7 The Appellant's 28 December 2022 Submissions at paras 65 and 69.

8 The Appellant's 28 December 2022 Submissions at paras 65–69.

9 The Appellant's 28 December 2022 Submissions at para 71.

10 The Appellant's 28 December 2022 Submissions at paras 75–79.

11 The Deputy Registrar's Grounds of Decision dated 1 July 2022 ("the DR's GD") at [1].

The Respondent's case

30 The Respondent argues that the Appellant should not be allowed to claim the amount forming the Subsidies and Grants from the Respondent.[12]

31 The Respondent contends that the Subsidies and Grants do not fall within the Insurance Exception.[13]

32 The Respondent also submits that the Subsidies and Grants cannot be encompassed within the Benevolence Exception. According to the Respondent, the Benevolence Exception encompasses "public charitable aid and some forms of relief given by the State as well as the produce of private benevolence". In contrast, the Subsidies and Grants do not contain the requisite charitable element.[14] In this regard, the Respondent argues that the Subsidies and Grants were not "prompted by sympathy" for the Appellant's misfortune but attached automatically and systematically by virtue of the Appellant's citizenship status, age and income level.[15] There is, therefore, no clear charitable intent.

33 According to the Respondent, the Subsidies and Grants are properly viewed as hospital and pharmaceutical benefits which do not contain an additional characteristic, *ie*, there is no clear intent by the government that the Subsidies and Grants were to be enjoyed without prejudice to the liability of the Respondent to compensate the Appellant for the whole unsubsidised value of

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12 Respondent's Written Submissions dated 28 December 2022 ("the Respondent's 28 December 2022 Submissions") at para 8.

13 The Respondent's 28 December 2022 Submissions at paras 8(i) and 22–71.

14 The Respondent's 28 December 2022 Submissions at paras 72–77.

15 The Respondent's 28 December 2022 Submissions at para 76.

her medical expenses.[16] The Respondent also argues that there is no need for a new exception to encompass the Subsidies and Grants, as the existing principles governing the exceptions to double recovery provide an adequate framework of inquiry.[17]

34 The Respondent also argues that if the Appellant were allowed to claim the amount forming the Subsidies and Grants with no requirement for the Appellant to return the amount thereafter to the relevant authority, it will effectively mean that the Appellant will be allowed to turn what was only intended as credit for medical expenses into fungible cash.[18] To this end, the Respondent also highlights that there is no clearly identifiable recipient of the Subsidies and Grants and no proper mechanism for the Appellant to return the funds.[19]

The Deputy Registrar's decision

35 The DR refused the Appellant's claim to recover the amount forming the Subsidies and Grants from the Respondent by way of damages.

36 According to the DR, the Subsidies and Grants did not fall within the Insurance Exception.[20] The DR took the position that there was a difference between the contractual relationship of the insurer and the insured and the relationship between the government and its citizens.[21] The DR also highlighted

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16 The Respondent's 28 December 2022 Submissions at paras 55 and 78–87.

17 The Respondent's 28 December 2022 Submissions at para 81.

18 The Respondent's 28 December 2022 Submissions at para 86.

19 The Respondent's 28 December 2022 Submissions at paras 88–114.

20 The DR's GD at [25]–[32].

21 The DR's GD at [28].

that the rationale behind the Insurance Exception is to allow the injured plaintiff to retain the insurance moneys because the insurance moneys are the injured plaintiff's fruits of his thrift and foresight. The DR further added that the rationale behind the Insurance Exception is not present in the case of the Subsidies and Grants which were conferred upon the Appellant.[22]

37 In relation to the Appellant's reliance on *Azlin (HC)*, the DR found that Ang JAD's findings in *Azlin (HC)* only applied to the specific government subsidies applicable in that case and could not stand for a broader proposition covering all government subsidies.[23]

38 The DR also took the position that the Subsidies and Grants did not fall within the Benevolence Exception.[24] The DR considered governmental benevolence to be quite different from the benevolence envisaged under the Benevolence Exception.[25] The DR took the position that there needed to be a clear expression of intent by Parliament that the Subsidies and Grants were to be enjoyed by the Appellant and not provided to relieve the Respondent of his liability to fully compensate the Appellant.[26] Given the lack of a clear expression of intent by Parliament, the DR took the position that there was little to suggest that Parliament intended to depart from ordinary common law principles, including the general rule that double recovery is disallowed.[27]

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22 The DR's GD at [29].

23 The DR's GD at [30]–[32].

24 The DR's GD at [33]–[47].

25 The DR's GD at [37].

26 The DR's GD at [38].

27 The DR's GD at [41]–[45].

39 Finally, the DR found that the Appellant should not be able to benefit from a windfall by being able to claim the Subsidies and Grants, especially since there was no statutory claw-back provision requiring the Appellant to return the Subsidies and Grants to the relevant authority.[28]

The District Judge's decision on appeal

40 The DJ dismissed the Appellant's appeal, refusing the Appellant's claim to recover the amount forming the Subsidies and Grants from the Respondent by way of damages.

41 The DJ found difficulties with accepting the Appellant's reliance on the decision in *Azlin (HC)*. According to the DJ, the government subsidies considered in *Azlin (HC)* were quite different from the Subsidies and Grants in the present case.[29] Further, there was a lack of clarity in *Azlin (HC*) on whether the court there treated the government subsidies in question as falling under the Insurance Exception, the Benevolence Exception or whether a new exception encompassing the government subsidies in question was being created.[30] The DJ found that it was also unclear whether the decision in *Azlin (HC)* was meant to cover all types of government subsidies or simply the government subsidies in question in *Azlin (HC)*.[31] Therefore, the DJ took a cautious approach and limited the holding in *Azlin (HC)* to the specific government subsidies considered in that case.[32]

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28 The DR's GD at [45]–[47].

29 The District Judge's Grounds of Decision dated 15 September 2022 ("the DJ's GD") at [22]–[30].

30 The DJ's GD at [28(a)].

31 The DJ's GD at [28(b)].

32 The DJ's GD at [29].

42 Further, the DJ also found that a new exception should not be introduced to encompass the Subsidies and Grants.[33] The DJ did not accept the Appellant's argument that the Appellant qualifying for the Subsidies and Grants meant that the Subsidies and Grants were intended for her enjoyment and were not provided in relief of the Respondent's liability to fully compensate her. There was no clear expression of Parliament's intent that double recovery should be allowed in the case of the Subsidies and Grants.[34] Given the above, the DJ found that the Subsidies and Grants lacked the additional characteristic necessary such that they could qualify as an exception to the rule against double recovery.[35]

43 The DJ considered that the outcome of disallowing the Appellant from claiming the amount forming the Subsidies and Grants from the Respondent was not one which could be said to be unjust or against public policy.[36] This was because the Appellant had already enjoyed the benefits of the Subsidies and Grants since she did not have to pay the amounts upfront.[37] Further, it was often the case that a victim would have certain benefits which would result in the tortfeasor paying less in damages. Here, the Appellant enjoyed the Subsidies and Grants, and her payable medical bills were lower. This did not necessarily mean that the outcome was one which was unjust and against public policy.[38]

44 The DJ also found that it would be unreasonable to imply, in the absence of an express statement by Parliament, that the Subsidies and Grants were not

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33 The DJ's GD at [31]–[38].

34 The DJ's GD at [36]–[38].

35 The DJ's GD at [38].

36 The DJ's GD at [39]–[40].

37 The DJ's GD at [40].

38 The DJ's GD at [40].

given with the intent to provide relief to the Respondent to fully compensate the Appellant.

45 Finally, the DJ agreed with the DR that the Appellant should not benefit from a windfall by being able to effectively turn what was only intended as credit for her medical expenses into fungible cash,[39] especially since there was no statutory claw-back provision requiring the Appellant to return the Subsidies and Grants to the relevant authority. The DJ also found that the Appellant's suggestion for an order to return the Subsidies and Grants to the relevant authority was impractical, since there was no clear process setting out how the funds would be accounted for and returned.[40]

Mr Trachsel's position

46 Mr Trachsel, the Young Independent Counsel, opines that the Appellant should not be allowed to recover the amount forming the Subsidies and Grants from the Respondent by way of damages.

47 Mr Trachsel states that the Subsidies and Grants do not fall within the Insurance Exception.[41] He opines that the citizens' payment of taxes to a government simply cannot be likened to the premiums paid by an injured plaintiff to his insurer. The Subsidies and Grants issued by the government similarly cannot be likened to the insurance moneys paid out by an insurer. Such a parallel is artificial and cannot withstand scrutiny.[42]

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39 The DJ's GD at [42].

40 The DJ's GD at [43]–[44].

41 Mr Trachsel's Written Submissions dated 12 January 2023 ("Mr Trachsel's 12 January 2023 Submissions") at paras 9–24.

42 Mr Trachsel's 12 January 2023 Submissions at paras 14–24.

48 Mr Trachsel also submits that the Subsidies and Grants do not fall within the Benevolence Exception.[43] Rather, the Subsidies and Grants are properly viewed as hospital and pharmaceutical benefits which do not contain an additional characteristic. Hence, the Subsidies and Grants do not come within the exceptions of the rule against double recovery.[44] Mr Trachsel further submits that to presume Parliament's intention in the Appellant's favour would, therefore, mean to presume that Parliament intended to enrich the injured plaintiff above and beyond the actual loss suffered. Mr Trachsel also submits that if Parliament had intended such an outcome, Parliament would have clearly legislated it.[45]

49 In relation to the Appellant's reliance on *Azlin (HC)*, Mr Trachsel submits that the decision by the court in *Azlin (HC)* was, in fact, to hold that government subsidies formed a new exception to the rule against double recovery.[46]

50 In Mr Trachsel's view, a new exception to the rule against double recovery should be considered.[47] Mr Trachsel's proposed exception would, however, extend only to selected government subsidies and grants which are intended by Parliament not to be deductible from any damages recoverable by an injured plaintiff.[48] Mr Trachsel submits that by having selected government subsidies and grants as a separate exception to the rule against double recovery,

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43 Mr Trachsel's 12 January 2023 Submissions at paras 25–39.

44 Mr Trachsel's 12 January 2023 Submissions at paras 32–34.

45 Mr Trachsel's 12 January 2023 Submissions at para 34.

46 Mr Trachsel's 12 January 2023 Submissions at para 29.

47 Mr Trachsel's 12 January 2023 Submissions at paras 40–48.

48 Mr Trachsel's 12 January 2023 Submissions at para 40.

there is the added benefit of better promoting analytical clarity in this area of the law.[49] Mr Trachsel also highlights that the list of exceptions is not closed, pointing to the Court of Appeal's holding in *The "MARA"*.[50]

51 Even under Mr Trachsel's proposed exception, however, Mr Trachsel states that the Subsidies and Grants in the present case would not be exempt from the rule against double recovery.[51] The main thrust of Mr Trachsel's argument is that there is no evidence of Parliament's intention that the Subsidies and Grants should be exempt from the rule against double recovery.[52] In the absence of such evidence, the Subsidies and Grants would not fall within Mr Trachsel's proposed exception.

My decision

What was the government's purpose and intention in providing the Subsidies and Grants?

52 Before exploring the legal issue of whether the Subsidies and Grants should be an exception to the rule against double recovery, it is critical to understand the nature of the Subsidies and Grants that the Appellant received in the present case. There were three types of Subsidies and Grants received by the Appellant.

53 The first type of Subsidies and Grants received by the Appellant was what parties referred to as the "generic government subsidies" which amounted to $19,211.57. This set of subsidies featured in the Appellant's inpatient and

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49 Mr Trachsel's 12 January 2023 Submissions at paras 56–61.

50 Mr Trachsel's 12 January 2023 Submissions at para 54.

51 Mr Trachsel's 12 January 2023 Submissions at paras 49–53.

52 Mr Trachsel's 12 January 2023 Submissions at para 49.

outpatient medical bills for the treatment she received at a public hospital, *ie*, Tan Tock Seng Hospital. This set of subsidies was referred to simply as "Government Subsidy" in the medical bills. The "generic government subsidies" are not given to all and sundry who avail themselves to the medical services provided by the public hospitals. The patient has to undergo a means test, consisting of stringent and strict criteria, before the government subsidies are dispensed. This is to assess the patient's ability to afford public healthcare services. The amount of means-tested subsidies also depends on whether the patient is a member of the PG or Merdeka Generation or whether the patient is covered by any government scheme such as the pension scheme, if he is, for example, a pensioner. Thus, although the government subsidies are dispensed to Singapore citizens, the amount of subsidies may vary from one citizen to another depending on the unique situation of each patient. For instance, a patient who is a Singapore citizen and is admitted to B2 or C wards, or incurs outpatient bills at public hospitals, may enjoy government subsidies of up to 80%, depending on his medical benefits as explained above.[53] For convenience, the parties refer to this set of subsidies as "generic government subsidies". In my view, the subsidies are far from *generic*. Rather, the subsidies are tailored to the profile of the specific patient named in a bill, based on an assessment of whether the patient is a Singapore citizen or a permanent resident as well as the monthly per capita household income of the patient.[54] In other words, the subsidies that were accorded to the Appellant in the present case were specially decided based on her personal circumstances after considering her means and ability to afford

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53 The Respondent's 28 December 2022 Submissions at para 3(a), referring to https://www.gov.sg/article/how-government-keeps-healthcare-costs-affordable-in-face-of-rising-global-healthcare-costs. See also, the DR's GD at [44].

54 See Subsidies for Acute Inpatient Care at Public Healthcare Institutions <https://www.moh.gov.sg/cost-financing/healthcare-schemes-subsidies/subsidies-for-acute-inpatient-care-at-public-healthcare-institutions> (accessed 5 March 2023).

public healthcare services, among other considerations. Hence, it may not be correct to address this set of subsidies in the Appellant's medical bills as *generic*.

54 The second type of subsidies received by the Appellant was the PG subsidies which amounted to $148.88. The PG subsidies featured in the Appellant's Tan Tock Seng Hospital outpatient medical bills. The PG subsidies were referred to as "Government Subsidy for Pioneer (additional 50% off)" in the medical bills. The PG subsidies were introduced as part of a broader PG Package introduced by the government to honour and recognise the contributions of the PG in the early years of Singapore's nation-building. This is made abundantly clear in s 3 of the Pioneer Generation and Merdeka Generation Funds Act 2014 (2020 Rev Ed) which sets out the broad purpose of the statute:

> **Purpose of Act**
>
> **3.** The purpose of this Act is to recognise and honour the participation and sacrifice of Singapore's Pioneers and Merdeka Generation Seniors in the early stages of Singapore's development by providing to such Pioneers and Merdeka Generation Seniors in their elder years assistance in the form of financial benefits or other support to meet their healthcare costs and other costs of living in Singapore.

55 The rationale for the PG Package and subsidies for outpatient care for the PG was similarly explained in the course of then-Deputy Prime Minister and Minister for Finance Mr Tharman Shanmugaratnam's Annual Budget Statement on 21 February 2014:[55]

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55 *Singapore Parliamentary Debates, Official Report* (21 February 2014) vol 91 (Tharman Shanmugaratnam, Deputy Prime Minister and Minister for Finance).

…

A key feature in this year's Budget is the Pioneer Generation Package. As the Prime Minister has stated, we are honouring this unique generation of Singaporeans who built up the country, although no package can fully reflect the contributions that our pioneers have made.

…

As the Prime Minister has announced, the Pioneer Generation Package will be for the first generation of Singaporeans who were living and working in Singapore after we became independent.

The Pioneer Generation Package will thus be for those who were at least 16 years old in 1965. Within these age cohorts, we have – for practical reasons – included those who became citizens before 1987. This is because our manual records before that are incomplete with regard to the dates they became citizens. However, we know that more than 90% of those who became citizens by 1987 were already living in Singapore before 1970.

In total, about 450,000 Singaporeans fulfil the criteria. There may be people who marginally miss out on the precise criteria, but have good claims to be counted among the Pioneer Generation. We will hence establish a panel to assess appeals on a case-by-case basis.

There will be three key components to the Pioneer Generation Package – Outpatient care, Medisave Top-ups and MediShield Life subsidies.

These special benefits that we are providing the Pioneer Generation will not be differentiated by income because our objective is to honour the contributions of this whole generation. However, members of the Pioneer Generation who are less well-off will benefit more where there are higher underlying subsidies for all lower income Singaporeans – such as at the [Specialist Outpatient Clinics ("SOC")], as I have just announced.

Let me start with outpatient care. Many of the Pioneer Generation require outpatient treatment, either for common illnesses or for chronic conditions, such as diabetes and high blood pressure. We will provide them with additional subsidies in three areas:

First, SOCs and polyclinics. As I have just explained, we are increasing SOC subsidies for the lower and middle income. We will give the Pioneer Generation a further 50% off their subsidised bills at the SOCs. What this amounts to is that all

> Pioneer Generation members will get a 75% to 85% subsidy for treatment at the SOCs. Similarly, the Pioneer Generation will receive an additional 50% off their subsidised bills at polyclinics.
>
> …

56 As can be seen from the above, therefore, the PG subsidies extended to the Appellant in the present case were part of a carefully designed package targeted to honour the contributions of the PG, of which the Appellant is a member. The Parliamentary intent was clear, *ie*, to assist the PG, including the Appellant, to meet their healthcare costs.

57 The third type of Subsidies and Grants received by the Appellant was what the parties referred to as the "community grants" which amounted to $20,155.16. This set of grants featured in the Appellant's Ang Mo Kio Thye Hua Kwan Hospital inpatient medical bill dated 13 May 2020. The community grants were referred to as "Government Grant (Community Hospital Service)" and "Government Grant (Drugs)" in the medical bill. As has been pointed out by the parties, the community grants are offered to Singapore citizens and permanent residents who require intermediate and long-term care services.[56] Once again, the community grants which feature in a patient's bill are tailored to the specific patient named in the bill, based on an assessment of whether the patient is a Singapore citizen or a permanent resident as well as the monthly per capita household income of the patient.[57] This was made clear by the then-Minister for Health Mr Gan Kim Yong in his response on 4 September 2019 to

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[56] The Respondent's 28 December 2022 Submissions at para 3(c), referring to https://www.moh.gov.sg/cost-financing/healthcare-schemes-subsidies/subsidies-for-government-funded-intermediate-long-term-care-services. See also, the DR's GD at [44].

[57] See Subsidies for Residential Long-Term Care Services <https://www.moh.gov.sg/cost-financing/healthcare-schemes-subsidies/subsidies-for-residential-long-term-care-services> (accessed 5 March 2023).

a question posed about whether there were any schemes to ensure affordable step-down care and nursing home facilities for Singapore's ageing population:[58]

> To ensure affordability of intermediate and long term care (ILTC) services, the Government provides multiple layers of support to help Singaporeans. The Government provides means-tested subsidies of up to 80% for ILTC services. More subsidies are directed towards the lower-income, where needs are greater.

58 In other words, the grants that were accorded to the Appellant in her medical bill were specifically decided after considering her means and ability to afford public healthcare services.

59 In summary, what is clear when considering the purpose and the nature of the Subsidies and Grants is that each subsidy and grant conferred upon the Appellant was tailored to the Appellant's needs after considering various factors which were unique to the Appellant, including her citizenship status, the fact that she was part of the PG as well as her per capita household income. In other words, the Subsidies and Grants were meant to specifically benefit the Appellant, having regard to her means and ability to afford public healthcare services. The Subsidies and Grants were conferred upon the Appellant because of the government's generosity and its desire to ensure affordable healthcare services for its citizens. Even when the government dispenses the Subsidies and Grants, it is not a one-size-fits-all approach. There are several critera that have to be met before an appropriate amount of subsidies and grants is given to a patient.

60 Having considered the nature of the Subsidies and Grants, I shall now consider the substantive legal issues.

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58 *Singapore Parliamentary Debates, Official Report* (4 September 2019) vol 94 (Gan Kim Yong, Minister for Health).

What should the Appellant be entitled to recover from the Respondent?

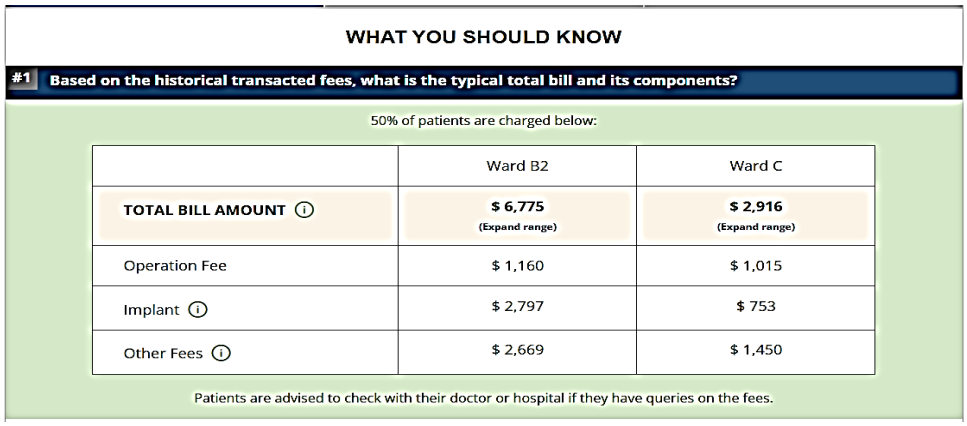
61 The starting point in terms of compensation is that the Appellant is entitled to be compensated by way of damages for the injuries suffered as a result of the Respondent's negligence. This is trite, given the general principles on damages which I have set out above at [9]–[19].

62 Counsel for the Respondent admitted, quite candidly, in his oral submissions that if the Appellant had sought treatment at a private hospital instead of a public hospital and a community hospital as she did, the Respondent would have had to compensate the Appellant by way of damages for the reasonable amounts incurred in the medical bills from the private hospital. In other words, the Respondent would have been willing to compensate the Appellant for private hospital medical bills which clearly would not have any of the Subsidies and Grants that were conferred upon the Appellant as a result of her seeking treatment at a public hospital and a community hospital.

63 Generally, the medical bills from the private hospital would have been significantly higher as the private hospital is profit-driven as opposed to the public hospital which is premised on affordable healthcare under the public healthcare system. More than just the fact that the private healthcare system is profit-driven, a key reason for the lower costs incurred when a patient seeks treatment under the public healthcare system is the fact that the public healthcare system has a rigid screening process. It is to ensure that the treatments provided to patients are only those which are necessary and that patients do not occupy public hospital beds longer than necessary. This is because the public healthcare system is always in high demand and it has very limited and scarce resources which must, therefore, be utilised in a manner that maximises efficiency. Further, patients of public hospitals are given subsidies

and grants, just like the Appellant in this case. Conversely, a patient who utilises the private healthcare system will incur significantly more costly medical bills than a patient who relies on the public healthcare system.

64 If one considers, for example, the historical transacted bill sizes for the treatment of an ankle fracture which requires surgical repair with implants, the differences in the average bill amounts are clear.[59] A simple illustration of the different bill amounts that a patient may incur at a public and private hospital can be obtained from the Ministry of Health's Historical Transacted Bill Sizes and Fee Benchmarks website (see the illustrations in the tables below).



WHAT YOU SHOULD KNOW

#1 Based on the historical transacted fees, what is the typical total bill and its components?

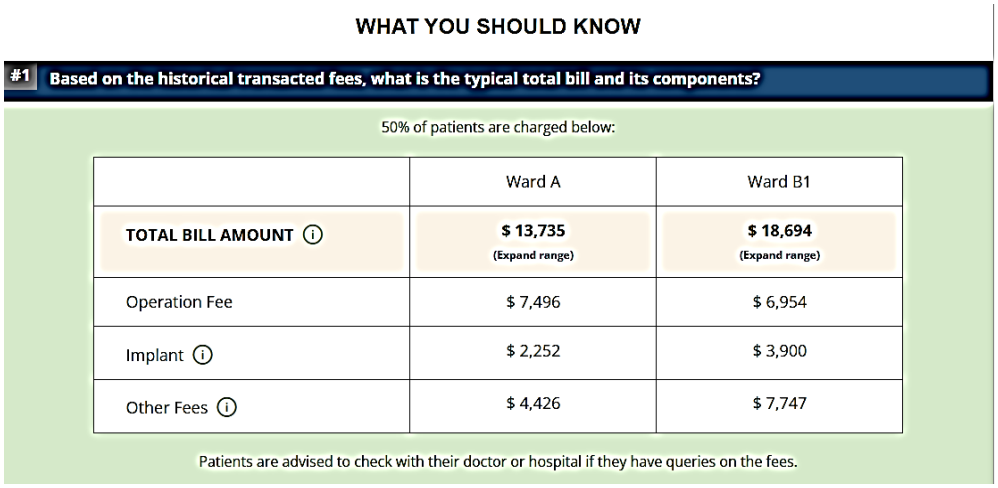
50% of patients are charged below:

	Ward B2	Ward C
TOTAL BILL AMOUNT ⓘ	**$ 6,775** (Expand range)	**$ 2,916** (Expand range)
Operation Fee	$ 1,160	$ 1,015
Implant ⓘ	$ 2,797	$ 753
Other Fees ⓘ	$ 2,669	$ 1,450

Patients are advised to check with their doctor or hospital if they have queries on the fees.

Figure 1: Historical transacted fees for treatment at a public hospital with subsidies

[59] Historical Transacted Bill Sizes and Fee Benchmarks Ankle Fracture, Surgical Repair With Implants <https://www.moh.gov.sg/cost-financing/historical-transacted-bill-sizes-and-fee-benchmarks/Details/SB701A--1> (accessed 5 March 2023).



WHAT YOU SHOULD KNOW

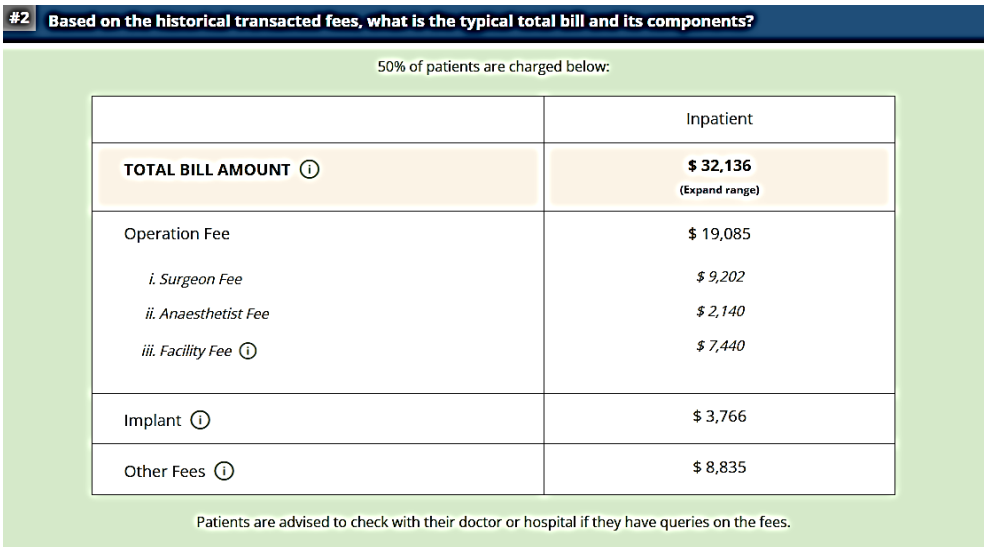
#1 Based on the historical transacted fees, what is the typical total bill and its components?

50% of patients are charged below:

	Ward A	Ward B1
TOTAL BILL AMOUNT ⓘ	**$ 13,735** (Expand range)	**$ 18,694** (Expand range)
Operation Fee	$ 7,496	$ 6,954
Implant ⓘ	$ 2,252	$ 3,900
Other Fees ⓘ	$ 4,426	$ 7,747

Patients are advised to check with their doctor or hospital if they have queries on the fees.

Figure 2: Historical transacted fees for treatment at a public hospital without subsidies



#2 Based on the historical transacted fees, what is the typical total bill and its components?

50% of patients are charged below:

	Inpatient
TOTAL BILL AMOUNT ⓘ	**$ 32,136** (Expand range)
Operation Fee	$ 19,085
i. Surgeon Fee	*$ 9,202*
ii. Anaesthetist Fee	*$ 2,140*
iii. Facility Fee ⓘ	*$ 7,440*
Implant ⓘ	$ 3,766
Other Fees ⓘ	$ 8,835

Patients are advised to check with their doctor or hospital if they have queries on the fees.

Figure 3: Historical transacted fees for treatment at a private hospital

65 From the above illustrations, the historical transacted bill sizes for the same treatment vary vastly between a private hospital, a public hospital (without any subsidy) and a public hospital (with subsidies).

66 In the present case, the Appellant sought treatment at a public hospital as well as a community hospital. This necessarily means that her medical bills,

without taking into account the Subsidies and Grants conferred upon her, are already significantly lower than the medical bills she would have incurred if she had sought treatment at a private hospital. Therefore, even if the Appellant were to receive compensation of the full amounts in her medical bills before the deduction of the Subsidies and Grants, this would still, in all likelihood, be lower than what she would have claimed had she sought treatment at a private hospital instead.

67 It seems that the Respondent is willing to compensate the Appellant for a much higher amount, *ie*, the private hospital medical bills, if she had sought treatment at a private hospital. But when the Appellant sought treatment at Tan Tock Seng Hospital, a public hospital, which led to much lower medical bills, and even lower with the Subsidies and Grants, the Respondent took strong umbrage because she benefited from the Subsidies and Grants. The Respondent resisted the Appellant's full medical claim on the basis of the rule against double recovery. In other words, the Respondent is seeking to compensate her much lower than the reasonable compensatory amount for the treatment of her injuries. The Subsidies and Grants were accorded to the Appellant by the generosity of the government and not the Respondent. From this perspective, it may appear unfair and unreasonable for the Respondent to resist the Appellant's claim for the amount forming the Subsidies and Grants which were dispensed to her by the government.

68 I shall now consider whether the Subsidies and Grants fall within either of the two well-established exceptions to the rule against double recovery.

Do the Subsidies and Grants fall within either of the two well-established exceptions to the rule against double recovery?

The Subsidies and Grants may not fall within the Insurance Exception

69 The Appellant, the Respondent, the DR, the DJ as well as Mr Trachsel opine that the Subsidies and Grants do not fall within the Insurance Exception. I agree with this view too.

70 The Insurance Exception exists because the insurance moneys that the injured plaintiff receives arises out of a contractual obligation between the injured plaintiff and the insurer under an insurance contract. In such a situation, as Windeyer J reasoned in *Espagne* (at 599–600), the payments received by the injured plaintiff is because of a contract which the injured plaintiff had entered into before the loss occurred and because the express or implied terms of that contract states that the insurance moneys are to be provided to the injured plaintiff notwithstanding any rights of action he might have. As highlighted above at [15], the reason why the injured plaintiff gets to retain the insurance moneys and make a full claim against the tortfeasor is because the insurance moneys he has received are "the fruits of [his] thrift and foresight" which should enure to his advantage as opposed to the tortfeasor's advantage: *Minichit* at [83], citing *McGregor on Damages* at paras 38–148.

71 The analysis above simply may not apply to Subsidies and Grants. It would be stretching the Insurance Exception to say that the Subsidies and Grants come within the Insurance Exception. The Subsidies and Grants conferred upon the Appellant were a result of the government's generosity and its desire to assist its citizens and permanent residents to meet their healthcare costs and to ensure that public healthcare is affordable.

The Subsidies and Grants are akin to collateral benefits which fall within the Benevolence Exception

72 I shall now consider whether the Subsidies and Grants fall within the Benevolence Exception. The Appellant takes the position that the Subsidies and Grants can be encompassed within the Benevolence Exception. The Respondent, the DR, the DJ and Mr Trachsel take the position that the Subsidies and Grants conferred upon the Appellant cannot fall within the Benevolence Exception.

73 As I have mentioned above at [16], the Benevolence Exception covers collateral benefits that an injured plaintiff receives as a result of the benevolence from others. The donors intend their donations to be given only to the victim for his personal use and enjoyment. The donations are certainly not provided to relieve the liability of the tortfeasor to fully compensate the victim. This was set out by Dixon CJ in *Espagne* (at 573) and cited in *The "MARA"* (at [32]). Further, as stated by Windeyer J in *Espagne* (at 599–600) which was cited in *The "MARA"* (at [32]), this would cover a variety of public charitable aid and some forms of relief given by the State as well as the produce of private benevolence.

74 In considering which types of relief given by the State would fall within the Benevolence Exception, Dixon CJ stated (at 573 of *Espagne*):

> … There are certain special services, aids, benefits, subventions and the like which in most communities are available to injured people. Simple examples are hospital and pharmaceutical benefits which lighten the monetary burden of illness. If the injured plaintiff has availed himself of these, he cannot establish or calculate his damages on the footing that he did not do so. On the other hand there may be advantages which accrue to the injured plaintiff, whether as a result of legislation or of contract or of benevolence, which have an additional characteristic. It may be true that they are conferred because he is intended to enjoy them in the events which have

> happened. Yet they have this distinguishing characteristic, namely, they are conferred on him not only independently of the existence in him of a right of redress against others, but so that they may be enjoyed by him although he may enforce that right; they are the product of a disposition in his favour intended for his enjoyment, and not provided in relief of any liability in others fully to compensate him. …

75 Dixon CJ drew a distinction between hospital and pharmaceutical benefits which lighten the monetary burden of illness and collateral benefits which are conferred upon the injured plaintiff which have an additional characteristic. The additional characteristic, according to Dixon CJ, is where the collateral benefits are conferred upon the injured plaintiff for his enjoyment, and not to relieve the liability of the tortfeasor to compensate him. In Dixon CJ's view, where the collateral benefit is an ordinary hospital or pharmaceutical benefit, the injured plaintiff would not be entitled to recover that amount from the tortfeasor. Where, however, the collateral benefit is one which has the additional characteristic as described above, the injured plaintiff would be entitled to recover that amount from the tortfeasor.

76 The Respondent and Mr Trachsel both take the position that the Subsidies and Grants in the present case should be treated as hospital and pharmaceutical benefits which lighten the monetary burden of illness, *ie*, that they should not be recoverable from the tortfeasor. According to them, the Subsidies and Grants cannot be said to have the additional characteristic because Parliament did not expressly state its intention that the Subsidies and Grants are provided for the enjoyment of the Appellant and not provided to relieve the liability of the Respondent to fully compensate the Appellant.

77 I note that this was also the position taken by the DJ. The DJ considered that there was a lack of clarity of Parliament's intention on the Subsidies and Grants which were conferred upon the Appellant. In particular, the DJ found

that there was no clear expression of intention by Parliament on whether victims may or may not claim the value of the Subsidies and Grants.[60] Therefore, the DJ declined to find that the Subsidies and Grants possessed the additional characteristic required to qualify as an exception to the rule against double recovery.

78 The Respondent, the DJ and Mr Trachsel find it difficult to identify expressly what Parliament's intention was when conferring the Subsidies and Grants upon the Appellant, *ie*, whether the Appellant could still claim the amount forming the Subsidies and Grants from the Respondent.

79 Parliament may not have made an express pronouncement on whether the victim of a road accident can claim the amount forming the Subsidies and Grants from the tortfeasor or that the tortfeasor can use the Subsidies and Grants to lessen his liability to the victim. But this should not prohibit the Court from trying to infer Parliament's intention from the purpose and rationale of its healthcare scheme.

80 As elucidated at [52]–[59] above, the Subsidies and Grants, when carefully examined, are part of schemes which were carefully designed to provide citizens, like the Appellant, with the necessary financial assistance when they utilise the public healthcare system. The Subsidies and Grants were specifically tailored to citizens, taking into account a myriad of factors, including their citizenship status, means and other eligibility criteria as stated above as well as, in the case of the PG subsidies, their status as members of the PG.

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60 The DJ's GD at [35]–[38].

81 Therefore, although Parliament has not clearly expressed its intention, the inference from the policy considerations and the government's various actions towards alleviating the healthcare costs for its citizens and permanent residents is that Parliament intended to assist and ensure that the Appellant's medical bills were within her means to pay. The Subsidies and Grants are meant to assist the Appellant who availed herself to the public healthcare system as a result of a traffic accident in which she was a victim. It is crystal clear and beyond any doubt that the public healthcare system and the Subsidies and Grants are not designed to relieve any potential tortfeasor from his liability to fully compensate the victim for injuries arising from any tortious wrong.

82 The Court cannot ignore the reality that the Subsidies and Grants are part of the larger healthcare schemes that utilise taxpayers' moneys to support the healthcare needs of the population. And these resources are precious and scarce. This is evident from Parliament's continued emphasis on the need to be prudent about spending on healthcare subsidies. Minister Gan Kim Yong alluded to this in his speech at the Ministry of Health Committee of Supply Debate on 7 March 2018:[61]

> …
>
> Sir, our continued investment in healthcare means higher National Health Expenditure (NHE). NHE has increased by more than 60% in five years, from $10.9 billion in 2010 to $18.9 billion in 2015. At 4.6% of GDP, this is lower than most developed countries, but we expect this to rise over time as our population ages.
>
> On the other hand, Government expenditure on health grew twice as fast, by about 120% over the same period, to fund infrastructure investments and to keep healthcare affordable for Singaporeans, by reducing their share of out-of-pocket expenses from about 40% to 30%. With the introduction of the

61 *Singapore Parliamentary Debates, Official Report* (7 March 2018) vol 94 (Gan Kim Yong, Minister for Health).

> Pioneer Generation Package and MediShield Life, and the extended the [*sic*] use of Medisave, the out-of-pocket for eight in 10 subsidised hospitalisation bills was below $100.
>
> But we cannot simply keep increasing subsidy or insurance pay-outs. Higher insurance pay-outs will result in higher premiums or higher subsidies will need to be funded. All these will be borne by Singaporeans eventually through higher premiums and higher taxes.
>
> Therefore, we need to take a long-term view on this.
>
> …

83 What follows from the above, then, is that the government has generously provided the Subsidies and Grants which have been conferred upon the Appellant to assist her with her medical bills in view of her financial needs. Nowhere in the parliamentary debates is there a pronouncement that the Subsidies and Grants are meant to relieve a tortfeasor from his liability to fully compensate the injured plaintiff. This would, in any case, be absurd – why would the government have intended to dedicate scarce resources towards healthcare subsidies to relieve tortfeasors of their liability to fully compensate victims *for their own tortious wrongs*?

84 The commonsensical answer must be that the government extended the Subsidies and Grants amounting to $39,515.08 specifically to the Appellant for her enjoyment, and not to relieve the Respondent of his liability. With the government emphasising that keeping healthcare affordable for Singapore citizens through subsidies is costly and needs to be done prudently, it cannot be the government's intention that such subsidies thereafter be applied towards relieving tortfeasors' liability arising from their own tortious wrongs. Therefore, the Subsidies and Grants are akin to collateral benefits which fall within the Benevolence Exception.

85 Ultimately, in the present case, it is a binary situation – should the Appellant be able to claim the amount forming the Subsidies and Grants from the Respondent, or should the Respondent benefit from the Subsidies and Grants by being able to compensate the Appellant a lower sum, *ie*, the cost of her medical bills after the deduction of the amount forming the Subsidies and Grants? Having considered the government's intention when conferring the Subsidies and Grants specifically to the Appellant after considering her means and ability to afford public healthcare services, my view is that the Appellant should be able to claim from the Respondent the amount comprising the Subsidies and Grants.

The Subsidies and Grants are similar to the subsidies conferred upon the first plaintiff in Azlin **(HC)**

86 In *Azlin (HC)*, the first defendant was found to be in breach of its duty of care to the first plaintiff, Ms Azlin. The first defendant's negligence caused a delay in diagnosing the first plaintiff with lung cancer. The delay resulted in the progression of the cancer from stage I to stage IIA, the growth of the cancerous nodule and the subsequent metastasis of the nodule. The first plaintiff passed away shortly before the assessment of damages hearing. At the assessment of damages hearing, the first plaintiff's estate put forward various claims, including her medical expenses. However, the bulk of the medical expenses incurred by the first plaintiff were covered by various sources of funding and did not require payment from her own pocket. In particular, her medical expenses were paid for by her insurance policies as well as from financial assistance which she received from the Medication Assistance Fund Plus, National Cancer Centre–Medifund and the Ministry of Health's Medication Assistance Fund. The first defendant argued that the plaintiffs should not be allowed to recover the medical expenses covered by these sources

because the estate of the first plaintiff was not under any legal obligation, under the terms of the insurance contract, to return them to the insurer if the estate succeeded in recovering the medical expenses paid for by the first plaintiff's insurance policies.

87 In relation to the medical expenses paid for by the first plaintiff's insurance policies, Ang JAD found that these clearly fell within the Insurance Exception. In relation to the three government subsidies conferred upon the first plaintiff, Ang JAD held as follows:

> 212 Indeed, as aforementioned at [143] above, the Court of Appeal in *Minichit Bunhom* ([143] supra) at [84] reaffirmed the position that insurance payouts form an exception to the rule against double recovery. This principle makes sense because insurance payouts would have been received by Ms Azlin not merely due to CGH's negligence, but primarily because Ms Azlin would have presumably duly paid her insurance premiums to the insurer. There is thus no "double recovery" because, as clearly explained by Windeyer J in *Espagne*, the benefit from the insurance contract – the insurance payout – accrues to Ms Azlin as a result of a distinct contractual relationship between the insurer and Ms Azlin.
>
> 213 The same reasoning applies to government subsidies. Subsidies are provided by the government to its citizens or residents due to the government's relationship with its people. Such subsidies are awarded for a multitude of public policy reasons, such as the betterment of public health or access to affordable healthcare for citizens who qualify for assistance.
>
> 214 The Court of Appeal in *The "MARA"* at [32] endorsed Windeyer J's *dicta* in *Espagne* that relief given by the state should also be an exception to the rule against double recovery. Therefore, the fact that Ms Azlin's medical expenses were paid by her insurance or government subsidies does not prevent her from claiming for compensation for these medical expenses from the tortfeasor.

88 What is clear from the above is that the court in *Azlin (HC)* recognised the three government subsidies conferred upon the first plaintiff – the Medication Assistance Fund Plus, National Cancer Centre–Medifund and the

Ministry of Health's Medication Assistance Fund – were government subsidies which were conferred by the government specifically upon the first plaintiff to assist the first plaintiff in the payment of her medical bill and to ensure affordable healthcare. Viewed in that spirit, the court in *Azlin (HC)* found that the fact that the first plaintiff's medical expenses were paid by government subsidies did not prevent her from claiming compensation for the medical expenses from the tortfeasor.

89 There was an appeal against Ang JAD's decision in *Azlin (HC)*. The Court of Appeal did not disturb Ang JAD's decision that the first plaintiff could claim the medical subsidies from the first defendant. However, I notice that the medical subsidies were not an issue brought before the Court of Appeal for deliberation.

90 The DJ and Mr Trachsel opine that the decision in *Azlin (HC)* appears to be unclear on whether the court there had made a finding that government subsidies in general are an exception to the rule against double recovery, or whether this was specific to the subsidies in question in *Azlin (HC)*. They also mention that it is unclear whether the court there found that the government subsidies in question fell within the Benevolence Exception or whether the court was creating a new exception to cover the government subsidies in question.

91 In my view, the Subsidies and Grants in the present case are similar to the subsidies received by the first plaintiff in *Azlin (HC)*. Therefore, even if it is unclear whether the finding in *Azlin (HC)* applies to government subsidies in general or the government subsidies in question in *Azlin (HC)*, this is not an issue in the present case given my finding that the nature and purpose of the Subsidies and Grants are similar to the subsidies considered in *Azlin (HC)*.

92 The Respondent, in his submissions, tries to distinguish the subsidies received by the first plaintiff in *Azlin (HC)* from the Subsidies and Grants in the present case. In the Respondent's view, the subsidies conferred upon the first plaintiff in *Azlin (HC)* were "last-ditch subsidies for patients with financial difficulties" and were subsidies which the first plaintiff needed to specifically apply for and which required the involvement of referrals from individuals such as doctors or medical social workers.[62] In contrast, the Respondent takes the position that the Subsidies and Grants in the present case are generic and applied automatically without any application required by the Appellant.

93 I find the distinction drawn by the Respondent to be weak. The fact that some subsidies may require a formal application while others may not should have no bearing on whether the amounts forming the subsidies can thereafter be claimed from the tortfeasor. Further, as I have explained earlier when setting out the nature of the Subsidies and Grants, there is nothing generic about the Subsidies and Grants conferred upon the Appellant. Rather, the Subsidies and Grants were tailored to the Appellant based on her means and ability to afford public healthcare services. Therefore, I cannot accept this distinction that the Respondent has tried to draw.

94 The court in *Azlin (HC)* may not have specifically stated whether the government subsidies in question there fell within either of the two well-established exceptions or formed a new exception to the rule against double recovery. However, the court in *Azlin (HC)* made its finding very clear that the fact that the first plaintiff's medical expenses were paid by various government subsidies did not prevent her from claiming for compensation for the medical expenses from the tortfeasor.

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62 The Respondent's 28 December 2022 Submissions at paras 33–38.

95 Similarly, as I have elucidated earlier at [72]–[85], I find that the Subsidies and Grants are akin to collateral benefits which fall within the Benevolence Exception.

Would allowing the Appellant's claim for the amount forming the Subsidies and Grants effectively mean an encashing of the Subsidies and Grants?

96 Finally, the Respondent has raised a concern that allowing the Appellant's claim for the amount forming the Subsidies and Grants would effectively mean that the Appellant would be allowed to "encash" and enjoy the value of the Subsidies and Grants by way of recovery against the tortfeasor. The Respondent takes the position that this would mean that the Appellant would be transmuting what was only intended as credit for medical expenses into fungible cash.[63] This was similarly raised as a concern by the DR and the DJ.[64] On this basis, they took the view that the outcome of the Appellant and like claimants receiving such a windfall could not be said to be reasonable and in accordance with public policy.

97 I have explained above that the Subsidies and Grants fit the rationale and the principle behind the Benevolence Exception of the rule against double recovery. Therefore, there is nothing wrong for the Appellant to monetise the Subsidies and Grants by seeking to fully claim the medical expenses from the Respondent as a just and reasonable compensatory claim for medical treatment for her injuries caused by the Respondent. This would not be against public policy, as the Subsidies and Grants were given to her by virtue of the generosity of the government for her enjoyment. Thus, it is not wrong for the Appellant to claim the amount forming the Subsidies and Grants from the Respondent.

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63 The Respondent's 28 December 2022 Submissions at para 86.

64 The DR's GD at [45] and the DJ's GD at [42].

Conversely, it would have been unfair and unreasonable as well as against public policy to allow the Respondent, the tortfeasor, to take undue advantage of the Appellant's Subsidies and Grants which the Respondent would not have been entitled to and would not have been given by the government if not for the Appellant. Allowing the Respondent to deduct the amount forming the Subsidies and Grants from the Appellant's medical claim would result in undue benefit to the Respondent. The net result is that the Respondent is allowed to compensate the Appellant less and thereby lower his liability to the Appellant for the wrong he inflicted on the Appellant. This is clearly an unjust outcome at the expense of the Appellant in a binary situation.

98 In the United Kingdom, the law does not allow the tortfeasor to benefit at the expense of the victim. The Social Security (Recovery of Benefits) Act 1997 (c 27) (UK) ("SSRBA") provides, under s 6(1) of the SSRBA, that the sum of social security benefits paid to an injured plaintiff would be deducted from the damages payable by a tortfeasor, but the tortfeasor is obliged to pay an amount equivalent to the sum of social security benefits received by the injured plaintiff to the Secretary of State. However, there is no statutory equivalent in Singapore.

99 In the present case, the Appellant had informed the DJ, and reiterates at the appeal, that if the Court allows her claim for the amount forming the Subsidies and Grants from the Respondent, she is willing and prepared to accept the Court's order that she returns the Subsidies and Grants to the relevant authority.[65] This gracious overture of the Appellant will completely demolish the Respondent's only defence that the Appellant would have enjoyed double recovery if the amount forming the Subsidies and Grants were paid to her.

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65 The Appellant's 28 December 2022 Submissions at paras 73–79.

100 The DJ, however, was not receptive to the Appellant's overture as she raised practical concerns that there is no clear process by which such funds would be accounted for and repaid.[66] With the greatest respect, the Appellant's overture should be supported and encouraged. There should not be any impediment for the Appellant to return the Subsidies and Grants to the Ministry of Health, the agency that conferred the Subsidies and Grants. In this situation, there can be two possible scenarios. The Ministry of Health can allow the Appellant to retain the Subsidies and Grants recovered from the Respondent being an elderly victim of the road traffic accident. Alternatively, the Ministry of Health can accept the return of the Subsidies and Grants and use the money for other public purposes.

101 I note that court orders have been made previously for injured plaintiffs to make the necessary repayments. In *Sun Delong v Teo Poh Soon and another* [2016] SGHC 129 ("*Sun Delong*"), the plaintiff was a Chinese national employed on a work permit in Singapore. He was knocked down by a lorry while cycling outside the course of his employment. He suffered injuries and sought general and special damages against the lorry driver. This included a claim for medical and nursing care expenses from the defendants, despite the fact that the majority of these expenses were paid for by the plaintiff's employer as the employer was statutorily required to do under the Employment of Foreign Manpower Act (Work Passes) Regulations 2012 (Cap 91A, No S 569/2012). In *Sun Delong*, Choo Han Teck J found that the plaintiff remained under an obligation to repay the employer. Choo J allowed the plaintiff to claim the expenses from the defendants but stipulated conditions for the plaintiff to

66 The DJ's GD at [43]–[44].

reimburse his employer and for the plaintiff's counsel to inform the employer of the award and the basis on which it was made: *Sun Delong* at [29].

102 Similarly, in the present case, the Appellant is allowed to claim the amount forming the Subsidies and Grants from the Respondent. However, this Court directs Counsel for the Appellant to inform the Ministry of Health that the Respondent is ordered by the Court to pay the Appellant the amount forming the Subsidies and Grants. The Appellant will then return to the Ministry of Health the amount of the Subsidies and Grants recovered from the Respondent, less all the legal expenses incurred by the Appellant after deducting the costs recovered from the Respondent in the pursuit of the claim. The Ministry of Health can decide what it wishes to do with the Subsidies and Grants, including whether to allow the Appellant to retain them.

Conclusion

103 For the above reasons, I allow the appeal. I make the following findings:

(a) The Subsidies and Grants were specifically conferred upon the Appellant as she had met the stringent criteria. The Subsidies and Grants were tailored to the Appellant, having regard to a myriad of factors, such as the means test, the Appellant's citizenship status, per capita household income and, in the case of the PG subsidies, her status as a member of the PG.

(b) The Subsidies and Grants may not fall within the Insurance Exception. The Subsidies and Grants were not conferred upon the Appellant due to any contractual relationship between the Appellant and the government. Neither did the Appellant receive the Subsidies and Grants because of her thrift and foresight. Rather, the Subsidies and

Grants conferred upon the Appellant were by virtue of the government's generosity and its desire to assist its citizens and permanent residents to meet the healthcare costs of its citizens and permanent residents and to ensure that public healthcare is affordable. Further, unlike the relationship between an insurer and the insured which is a contractual relationship arising from a commercial transaction between the insured and the insurance company, the relationship between the government and its citizens and permanent residents is not premised on a commercial contract.

(c) The Subsidies and Grants are, however, akin to the collateral benefits which fall within the Benevolence Exception. There may be no express pronouncement by Parliament on whether the Subsidies and Grants are to be enjoyed by the Appellant independently of any claim she may have against the Respondent. However, the broad intentions of Parliament in relation to the Subsidies and Grants provide useful guidance in assessing whether the Subsidies and Grants possess the additional characteristic. The intention of Parliament is clear that the Subsidies and Grants are meant to assist patients to meet their healthcare costs. Healthcare resources are precious and scarce. Thus, it is clear that the government will not utilise scarce resources to relieve tortfeasors of their liability to fully compensate victims for their own tortious wrongs. It is a no-brainer that the government offered the Subsidies and Grants amounting to $39,515.08 to the Appellant for her enjoyment, and not to relieve the Respondent of his liability.

(d) The rationale and purpose of the Subsidies and Grants in the present case are similar to the subsidies which were conferred upon the first plaintiff in *Azlin (HC)*. The court in *Azlin (HC)* ruled that the first

plaintiff's government subsidies did not prevent her from claiming for compensation for the full medical expenses from the tortfeasor. Similarly, in the present case, the Appellant is allowed to claim the amount forming the Subsidies and Grants from the Respondent.

(e) The Respondent raised a concern that allowing the Appellant's claim for the amount forming the Subsidies and Grants would effectively mean an encashing of the Subsidies and Grants. The Appellant has informed, at this appeal and before the DJ, that if the Court awards the Subsidies and Grants in her favour, she is willing to accept the Court's order that she returns the Subsidies and Grants recovered from the Respondent to the relevant authority. The Respondent is to pay the amount forming the Subsidies and Grants to the Appellant. Counsel for the Appellant is to inform the Ministry of Health of the award. The Appellant is to return to the Ministry of Health the Subsidies and Grants recovered from the Respondent, less all legal expenses incurred by the Appellant after deducting the costs recovered from the Respondent in the pursuit of the claim. The Ministry of Health is at liberty to deal with the return of the Subsidies and Grants in any way it deems fit, including whether to allow the Appellant to retain the Subsidies and Grants granted in her medical bill for the injuries she sustained in the road traffic accident. This will demolish the Respondent's argument that the Appellant would have enjoyed double recovery if the amount forming the Subsidies and Grants were paid to her.

104 For the foregoing reasons, I award the Appellant an additional sum of $39,515.08 in special damages to be recovered from the Respondent. I direct the Appellant to return to the Ministry of Health this amount of $39,515.08 less all legal costs incurred by the Appellant after deducting the costs recovered from the Respondent in the pursuit of the claim. Counsel for the Appellant is to inform the Ministry of Health of the award. The Ministry of Health is at liberty to take any action it deems fit, including whether to allow the Appellant to retain the Subsidies and Grants.

105 I am grateful for the detailed submissions by the parties, as well as the able and learned assistance of Mr Trachsel.

106 I shall now hear parties on costs.

Tan Siong Thye
Judge of the High Court

VM Vidthiya (Hoh Law Corporation) for the appellant;
Akramjeet Singh Khaira and Mark Cheng Wei Chin (Legal Solutions LLC) for the respondent;
Jonathan Kenric Trachsel (Allen & Gledhill LLP) as young independent counsel.